

these frequencies to other media or other fixed channels, including those in other microwave bands.

(a) ET licensees may negotiate with FMS licensees authorized to use frequencies in the 1850–1990 and 2110–2200 MHz bands, for the purpose of agreeing to terms under which the FMS licensees would—

(1) Relocate their operations to other fixed microwave bands or other media; or alternatively

(2) Accept a sharing arrangement with the ET licensee that may result in an otherwise impermissible level of interference to the FMS operations.

(b) FMS operations in the 1850–1990 and 2110–2200 MHz bands, with the exception of public safety facilities defined in § 101.77, will continue to be co-primary with other users of this spectrum until two years after the FCC commences acceptance of applications for ET services (voluntary negotiation period), and until one year after an ET licensee initiates negotiations for relocation of the fixed microwave licensee's operations (mandatory negotiation period). In the 1910–1930 MHz band allocated for unlicensed PCS, FMS operations will continue to be co-primary until one year after UTAM, Inc. initiates negotiations for relocation of the fixed microwave licensee's operations. Public safety facilities defined in § 101.77 will continue to be co-primary in these bands until three years after the Commission commences acceptance of applications for an emerging technology service (voluntary negotiation period), and until two years after an emerging technology service licensee or an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations (mandatory negotiation period). If no agreement is reached during either the voluntary or mandatory negotiation periods, an ET licensee may initiate involuntary relocation procedures. Under involuntary relocation, the incumbent is required to relocate, provided that the ET licensee meets the conditions of § 101.75.

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§ 101.71 Voluntary negotiations.

During the two or three year voluntary negotiation period, negotiations are strictly voluntary and are not defined by any parameters. However, if the parties have not reached an agreement within one year after the commencement of the voluntary period, the FMS licensee must allow the ET licensee (if it so chooses) to gain access to the existing facilities to be relocated so that an independent third party can examine the FMS licensee's 2 GHz system and prepare an estimate of the cost and the time needed to relocate the FMS licensee to comparable facilities. The ET licensee must pay for any such estimate.

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§ 101.73 Mandatory negotiations.

(a) If a relocation agreement is not reached during the two or three year voluntary period, the ET licensee may initiate a mandatory negotiation period. This mandatory period is triggered at the option of the ET licensee, but ET licensees may not invoke their right to mandatory negotiation until the voluntary negotiation period has expired.

(b) Once mandatory negotiations have begun, an FMS licensee may not refuse to negotiate and all parties are required to negotiate in good faith. Good faith requires each party to provide information to the other that is reasonably necessary to facilitate the relocation process. In evaluating claims that a party has not negotiated in good faith, the FCC will consider, *inter alia*, the following factors:

(1) Whether the ET licensee has made a *bona fide* offer to relocate the FMS licensee to comparable facilities in accordance with Section 101.75(b);

(2) If the FMS licensee has demanded a premium, the type of premium requested (e.g., whether the premium is directly related to relocation, such as system-wide relocations and analog-to-digital conversions, versus other types of premiums), and whether the value of the premium as compared to the cost of providing comparable facilities is disproportionate (*i.e.*, whether there is a lack of proportion or relation between the two);